

JAMES S. THOMSON  
California SBN 79658  
Attorney and Counselor at Law  
732 Addison Street, Suite A  
Berkeley, California 94710  
Telephone: (510) 525-9123  
Facsimile: (510) 525-9124  
Email: james@ycbtal.net

TIMOTHY J. FOLEY  
California SBN 111558  
Attorney at Law  
1017 L Street, Number 348  
Sacramento, California 95814  
Telephone: (916) 599-3501  
Email: tfoley9@earthlink.net

Attorneys for Defendant  
JUSTIN GRAY

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTIN GRAY, et al

Defendants.

**Case No. 1:20-cr-00238-JLT-SKO**

**JUSTIN GRAY'S REPLY TO  
OPPOSITION AND RESPONSE TO  
MOTION FOR RELEASE, INSPECTION,  
AND COPYING OF JURY SELECTION  
RECORDS (MOTION, Doc. # 1945)**

Defendant Justin Gray, through counsel, has filed a motion for an order from the Chief Judge allowing release, copying and inspection of jury selection records, consistent with the Jury Selection and Service Act, 28 U.S.C. § 1861 et.seq., and the Court's own Juror Management Plan. Doc. # 1945; Juror Management Plan, sections 6.02, 6.04. The government has filed an opposition and response, objecting to some of the requests. Doc. # 1959. Mr. Gray files this reply to the government's response, addressing the specific requests in order.

**1. Administrative Forms.**

The government does not object to the disclosure of the AO-12 forms relating to the 2025 wheel.

1           **2.     Data.**

2           The request for additional statistical or demographic analyses produced to ensure  
3 that the Master Jury Wheel and the Qualified Jury Wheel are in compliance with the Juror  
4 Management Plan and the JSSA is a request for “records or papers used . . . in connection  
5 with the jury selection process” under 28 U.S.C. § 1867(f). The government nonetheless  
6 objects.

7           The objection is groundless: the request does not ask the clerk to “prepare” any  
8 documents, only to disclose those that already exist and were used in the selection  
9 process. “If any additional statistical or demographic analyses were performed, they  
10 could be necessary to support a motion under § 1861(f).” *United States v. Yandell*, 2023  
11 WL 2918803, at \*2 (E.D. Cal., April 12, 2023); see *United States v. Holmes*, 2020 WL  
12 5408163, at \*6 (N.D. Cal., Sept. 9, 2020). Previously, former Chief Judge Mueller  
13 granted a similar request in this case. Doc. # 1290, at 5.

14           **3.     Purge Procedures.**

15           Mr. Gray has requested “[a]ny existing materials containing descriptions of the  
16 procedures used to purge duplicate records and any report or analysis of the procedures in  
17 addition to those provided in Jury Plan Section 2.02.” The government objects, stating  
18 incorrectly that the request “demands” that the Clerk of the Court “prepare a declaration”  
19 describing the purging procedures. Doc. # 1959, 5.

20           The objection is meritless. The request is for “existing materials.” It would be  
21 reasonable for Clerk staff to conduct any purging pursuant to a description of the purging  
22 procedure. Such a description is well within the definition of records and papers used in  
23 the jury selection process. Indeed, the purging process cannot be evaluated without such  
24 documents. A similar request was granted previously in this case, Doc. # 1290, at 5, and  
25 in the *Yandell* case, 2023 WL 2918803, at \*3.

26           **4.     Calculation Procedures.**

27           As with the purge procedures, the government’s objection to the production of  
28 calculation procedures appears to be based on the incorrect assumption that the disclosure

1 of existing records triggers some duty to prepare a declaration or answer interrogatories.  
2 Rather, the request is for “existing” additional records. A similar request was granted  
3 previously in this case, Doc. # 1290, at 5, and in the *Yandell* case, 2023 WL 2918803, at  
4 \*3.

5 **5. General Notice.**

6 The government does not object to the request for general notices issued in 2025  
7 explaining the jury selection process.

8 **6. Procedures for Non-Responses.**

9 The government objects to this request. Again, the government asserts incorrectly  
10 that the request requires the Clerk to “generate evidence.” Doc. # 1959, 6. Rather, this  
11 request is directed at existing documented procedures.

12 In *Yandell*, the Court noted: “If the Clerk’s Office has a procedure, that procedure  
13 could potentially illustrate whether a particular group tends not to respond or not to have  
14 an accurate address, and that information could be necessary to support a motion under §  
15 1861(a).” *United States v. Yandell*, 2023 WL 2918803, at \*3-4. The request should be  
16 granted.

17 **7. Information on Failure to Submit.**

18 The government objects to this request, though it acknowledges the Court’s ruling  
19 in *Yandell* granting an identical request. As the Court noted, “Data about trends like these  
20 could help an expert form opinions about systematic underrepresentation and could be  
21 necessary to support a motion under § 1861(a).” *United States v. Yandell*, 2023 WL  
22 2918803, at \*4. Former Chief Judge Mueller previously granted a similar request in this  
23 case. Doc. # 1290, at 6.

24 **8. Failure-to-Appeal or Submit.**

25 The government objects to this request, arguing that a fair cross section challenge  
26 focuses on the pool from which the jury is drawn, not “the people who failed to appear.”  
27 Doc. # 1959, 6. However, the non-responders, and the Clerk’s reaction to non-  
28 responders, could have an important impact on the formation of the jury pool, especially

1 if a pattern, or trend, of non-responders exists. In *Yandell*, the Court granted a similar  
2 request. *United States v. Yandell*, 2023 WL 2918803, at \*4, and former Chief Judge  
3 Mueller granted this request in response to the earlier motion. Doc. # 1290, at 7.

4 **9. Proportionality Calculations.**

5 The government does not object to this request. The government requests that the  
6 request be limited to the Fresno division in 2025. Mr. Gray accepts this limitation.

7 **10. Master Jury Wheel Data.**

8 The government does not object to this request. As noted in the motion, this data  
9 should be produced in native form (excel spread sheet). In light of the need to share this  
10 data with an expert witness, however, the suggested limitation that the data be produced  
11 only for viewing in the clerk's office is impractical. However, Mr. Gray does not object  
12 to an appropriate protective order. See pages 10-11 of former Chief Judge Mueller's  
13 previous order in this case, Doc. # 1290.

14 **11. Status Codes.**

15 The government objects to this request. Doc. # 1959, 7. As the Court in *Yandell*  
16 recognized, however, this information is potentially relevant to the analysis of systemic  
17 factors and will help verify the information received in response to the other requests.  
18 *Yandell*, 2023 WL 2918803, at \* 4. Previously, former Chief Judge Mueller granted a  
19 similar request in this case. Doc. # 1290, at 8.

20 **12. Sources of Data.**

21 The government does not object to this request. Doc. # 1959, 8.

22 Mr. Gray concurs with the government (Doc. # 1959, 8) that juror and prospective  
23 juror personal information (social security numbers, dates of birth, addresses) should not  
24 be disclosed if possible. However, a massive redaction may be impractical. Mr. Gray  
25 does not object to an appropriate protective order. See pages 10-11 of former Chief  
26 Judge Mueller's previous order, Doc. # 1290.

1 Dated: July 10, 2025

Respectfully submitted,

2 /s/ James S. Thomson

3 /s/ Timothy J. Foley

4 JAMES J. THOMSON  
5 TIMOTHY J. FOLEY  
Attorneys for JUSTIN GRAY